

# Quid Novi

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McGILL UNIVERSITY FACULTY OF LAW  
FACULTE DE DROIT DE L'UNIVERSITE MCGILL

February 1st, 1989  
le 1er février, 1989

## Le Nez de Bourassa

par Pierre Larouche, B.C.L. III  
*Première partie.*

Il est chez tous les politiciens et politiciennes une caractéristique que les caricaturistes aiment relever. Pour Brian Mulroney, c'est le menton; pour John Turner, les yeux; pour Jacques Parizeau, le ventre. Robert Bourassa, lui, outre son allure flegmatique, sa mèche jadis rebelle, se distingue par son nez. Un pif qui, sans atteindre des dimensions cyranesques, semble tout de même faire la gloire de son porteur. Or, pour Robert Bourassa, ce qui aurait du n'être qu'une pâture donnée aux vilains dessinateurs acquiert une valeur symbolique. La politique québécoise, semble-t-il, est entrée dans l'ère du Nez. L'éternel recommencement du débat linguistique, suite au jugement de la Cour Suprême, en est la preuve.

### 1 - Le contexte

Il faut tout d'abord présenter quelques propositions qui nous serviront de toile de fond.

Le Québec, depuis la Révolution tranquille, a tenté de réconcilier deux objectifs qui peuvent paraître plutôt contradictoires: L'ouverture sur le monde et la préservation du caractère distinct de la société québécoise. Quant au premier, il s'est manifesté à nouveau en novembre dernier, alors que les Québécois appuyèrent majoritairement l'Accord de libre-échange canado-américain. Ils traduisaient ainsi leur

volonté de devenir des partenaires commerciaux à part entière. Les années 80' montrent d'ailleurs que les Québécois ont eu tendance à privilégier cet objectif. Ce que plusieurs ont dénoncé comme une descente dans le confort et l'indifférence pourrait s'avérer un renversement dans l'ordre des priorités.

Mais la nécessité de préserver le caractère distinct du Québec n'est pas pour autant disparue. L'action la plus radicale en ce sens a probablement été l'adoption de la *Charte de la langue française* (ci-après la loi 101) en 1977. La loi 101 a instauré une certaine paix linguistique au Québec, non en exprimant un consensus (chose impossible, nous le verrons), mais en établissant clairement les règles du jeu, de façon à ce que tous sachent à quoi s'en tenir. Il peut être fort opportun pour plusieurs de prétendre aujourd'hui que la loi 101 n'avait pas réglé le problème, mais il demeure que le Québec a connu une relative accalmie linguistique entre 1977 et 1985.

La loi 101 ne traitait pas la langue anglaise comme une "maladie honteuse". Au contraire, elle reconnaissait que les messages religieux, politiques, idéologiques, humanitaires (art. 59), ainsi que l'affichage à des fins

culturelles ou ethniques (art. 60 et 62) pouvaient se faire dans une autre langue. La loi 101 était fondée sur la distinction entre l'expression commerciale et les autres formes d'expression, celle-là même qui a été rejetée par la Cour suprême. L'affichage unilingue français ne visait pas à oblitérer l'anglais, mais bien à assurer le visage français du Québec, conformément aux vœux de la majorité, dans un domaine où les enjeux individuels sont moindres. La loi 101 n'était d'ailleurs pas si implacable. Il était entendu que, dans les secteurs vitaux à la communauté anglophone, soit les librairies, les petits commerces de famille, etc., la loi 101 ne s'appliquait pas. Il semble, en effet, difficile de soutenir que l'affichage en anglais chez Eaton ou chez Steinberg est si essentiel à la minorité anglophone qu'elle ne puisse survivre sans celui-ci.

La loi 101 n'a toutefois pas réglé la question. Le français est toujours aussi menacé maintenant qu'avant. Les incrédules n'ont qu'à regarder les statistiques linguistiques, qui ne cessent de montrer un recul du français face à l'anglais, même au Québec.

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### Quote of the Week

None.



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# ANNOUNCEMENTS

## Clerkships, Federal Court of Canada Postes d'Auxiliaires juridiques, Cour fédérale du Canada

Les juges de la Cour fédérale du Canada recrutent actuellement des auxiliaires juridiques ("law clerks") pour l'année 1990-91. Les auxiliaires juridiques effectuent des recherches sur des points de droit sous la direction du juge auquel ils sont assignés. Le salaire est de 25,057 \$, et certains barreaux considèrent que les fonctions d'auxiliaire juridique remplacent entièrement ou en partie le stage obligatoire.

Les diplômés bilingues du Programme National ont d'excellentes chances d'être engagés par la Cour fédérale. Pour de plus amples informations, s'adresser au vice-doyen Jutras. La date limite pour le dépôt des candidatures est le 10 mars 1989.

\*\*\*\*

Clarkson, Tétrault shall be hiring for the summer of 1990 and for two articling periods the following year. They will be holding interviews at McGill on Feb. 13 between 9:00 and 5:00 p.m. Interested students should deliver their resumé, including marks, to the Admissions Office before Thursday, Feb. 2. All those chosen will be contacted for first interviews by Feb. 8.

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## BAR/BRI Brief

To all students registered in the summer course, and to anyone interested in signing up, there will be a brief meeting at noon, Wednesday, February 1, in Room 203. Application forms for the upcoming MPRE in March will be available. Remember, the registration deadline is Feb. 18. For information contact Joani Tanenbaum.

\*Late Registration will cost \$75 (U.S.) instead of \$20.

Stitt, Baker and Mackenzie, a Toronto-based law firm, will be interviewing at McGill on February 8th. Anyone interested

in articling with them, please sign up the Admissions Office before Feb. 2. Don't forget your C.V.

## Bull - etins

by Dan Urbas, B.C.L. II

Still smarting over last year's review in The Canadian Lawyer, McGill's Faculty Council has given final approval for 1989-90 course additions. The additions will serve to correct McGill's perceived bias in favour of a theoretical-based approach to the study of law. To correct this imbalance more practical courses will be added to next year's list of course offerings. New three credit courses in sewing, automotive shop, tai-chi, hang-gliding and billable hours are now available. As usual, the new courses will be offered in both English and French.

A 1-976 Third Party line for law students will operate during the upcoming April exam period. Anxious law students will be able to access the Third Party line for discussion on selected legal topics of their choice with up to 8 other law students at a time. All calls are confidential and will be streamed by year and discipline; for example - 1-976-LLb2 or 1-976-BCL3. All calls will cost \$3.00 (plus photocopy charge, where applicable) and there will be prizes too. Whenever the Party line operator yells "McGill" some lucky caller will win a Cola beverage and a course summary of their choice.

## Law Students

You want some change?

You want to live an experience in another city for a year?

You can do your inscription at the Bar school of Québec City?

I am a law student from Laval University in Québec City and I would like to do my inscription at Montréal's Bar School. Even if the limited space doesn't permit anymore transfers, it's possible to choose the Bar School that you want if we make an exchange.

So, if you are interested in coming to the Bar School of Québec, just let me know.

Lise Caron

1715 Sheppard, no. 3

Sillery, Québec G1S 1K5

(418) 688-0224

Le Nez...

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La dynamique naturelle joue contre la présence française en Amérique de Nord. Étant donné l'impossibilité de revenir dans le cocon qui protégeait indirectement les Québécois francophones avant 1960, il y a tout lieu de croire que, sans intervention pour arrêter le cours naturel des choses, le français se marginalisera en l'espace d'une centaine d'années.

### La décision de le Cour suprême

Tout a commençé avec un jugement de la Cour suprême du Canada. Il aurait pu être relativement banal. Mais Robert Bourassa s'était, en quelque sorte, fourni la corde avec laquelle se pendre en exploitant l'attente de cette décision pour échapper à ses responsabilités pendant trois ans.

Le jugement de la Cour Suprême n'a rien de trop surprenant, tenant compte des décisions des instance inférieures. Le raisonnement de la Cour présente toutefois une faiblesse, que les commentateurs n'ont pas tous relevée. Pendant une quinzaine de pages, les juges se demandent si la liberté d'expression doit s'étendre à l'expression commerciale. Se basant sur la jurisprudence américaine, ils concluent par l'affirmative. Mais, comme le Procureur général du Québec l'avait plaidé, la Charte canadienne, au contraire du *Bill of Rights* américain, ne protège pas les libertés économiques, mais seulement les libertés politiques. La Cour utilise des conceptions grandioses de l'expression commerciale qui mettent l'emphasis sur son importance économique, comme si la loi 101 bâillonnait complètement les commerçants québécois. Sans vouloir trop élaborer sur cette question, il reste que le traitement accordé à ce problème par la Cour suprême n'est pas vraiment satisfaisant, et que l'inclusion de l'expression commerciale dans la liberté d'expression constitue le talon d'Achille de l'arrêt *Ford c. Procureur général du Québec*.

### La réponse: la loi 178

Le nez de Robert Bourassa entre alors en jeu. Malgré ses lunettes, le champ de vision du Premier ministre semble restreint à

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# Meeting the Catholic Challenge

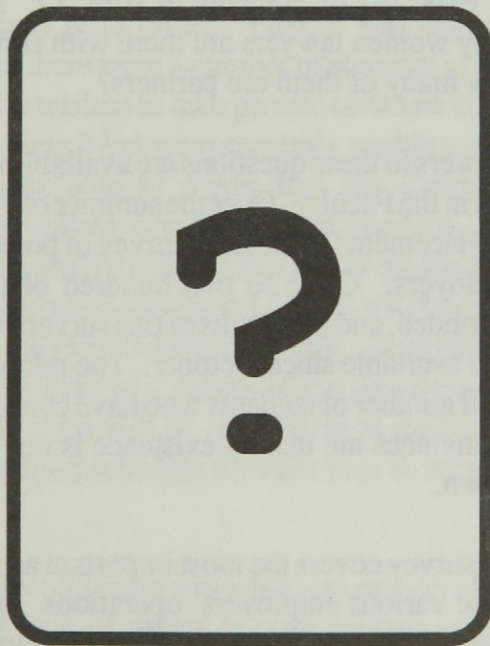
by Jonathan Quaglia, B.C.L. I

Our individual challenge is balancing our personal lives with our pursuit of legal studies; as Roman Catholics, we face this task while at the same time trying to figure out our relationship with God and the Catholic Church. Recently, a group of people met to discuss ways of meeting this challenge as a community. It was suggested that we come together to talk about the impact social, moral and academic issues have on our religious lives, that we invite guest speakers to lead and participate in special discussion groups and that we organize events that will bring the community closer together (for ex-

ample, an Easter meal, volunteer service work). The name of this group is the Saint Thomas More Society for Catholic Law Students and Lawyers.

Ne soyez pas intimidés par le nom de ce groupe. Nous voulons rassembler des individus qui, pour des raisons différentes et à des degrés divers, partagent une même recherche.

Notre première rencontre a attiré des gens ayant vécu des expériences diversifiées donc des non-Catholiques et des Catholiques. Une autre rencontre aura lieu prochainement et tous ceux qui sont intrigués ou intéressés par notre défi sont invités à y participer.



## À la Recherche de la Photo Perdue (8 vol.)

Le Doyen a gracieusement accepté de contribuer à l'agrandissement et à l'encadrement de photos d'événements et/ou d'individus mémorables, qui orneront les murs de cet auguste bâtiment à tout jamais (ou presque). Si vous avez des clichés qui méritent pareil honneur, n'hésitez pas à en faire part à Pierre Larouche ou Norbert Haensel. Si vous voulez faire partie d'un cliché mémorable, nous sommes désolés, arrangez-vous (quelle politesse!).

If you have some deserving photographs, please do not hesitate to contact Norbert Haensel or Pierre Larouche.

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## Calendar of Events

February 2    15h00- Happy House Coffee Hour III  
                    18h00    Common Room Old Chancellor Day Hall

February 3    12h00    Legal Theory Workshop  
                                 Pierre Legrand Jr.  
                                 "The Case for Judicial Reunion of Contracts"  
                                 Room 202, Chancellor Day Hall

February 10   12h00    Legal Theory Workshop

## Placement Office Provides "Employers' Database"

by Daniel Jutras,  
Associate Dean (Placement and Admissions)

Is it possible to article with the Federal Department of Justice? When should one apply for a judicial clerkship? What is firm X's policy on maternity leave? How many hours are expected of students in firm Y? How many women lawyers are there with firm Z? How many of them are partners?

Answers to these questions are available right here in the Faculty. Over the summer of 1988, the Placement Office ran a survey of potential employers. Close to two hundred of them responded, and the results of this survey have been available since October. The relatively small number of students who have consulted it convinces me that its existence is not well known.

The survey covers the most important aspects of the various employers' operations. It addresses issues such as the number of lawyers, the number of women lawyers, the number of women partners, the ratio of partners to associates, the organization's area of specialization, the number of summer and articling positions available and the salary offered for each of them, the chances of being hired for a full time position after the articling period, the organization's expectation as to working hours, the organization's policy on maternity

leave, etc. It also provides the name of a contact person within the firm or government agency as well as deadlines for applications.

This is a unique and valuable resource. Use it! Whether you already have an articling or summer job, or are about to interview with a few potential employers, or are still looking, the Employers' Database can provide valuable information that you will not find anywhere else.

### MERCI!!

Les efforts de Jennifer Dolman et du Comité Carrières, de même que ceux de Suzan Roy-Gasperec et Sharon Kuzminski du bureau de placement, ont fait de la journée Carrières du 20 janvier dernier un très grand succès. Au nom de mes collègues et, j'en suis sûr, des étudiants et étudiantes qui ont participé à cette activité, je leur exprime ici toute ma gratitude pour ce travail énorme.

Plus de 140 avocats étaient présents à l'occasion de cette journée. L'espace à la Faculté étant limité, il faudra peut-être repenser la formule pour l'an prochain. Toute suggestion ou commentaire sur l'opportunité d'organiser une journée Carrières en 1990 sera reçue avec bienveillance et gratitude.

Daniel Jutras (Associate Dean)

# Dean's Hot Seat

by Dean R. Macdonald

Last Wednesday, January 18 the President of the Law Students' Association, Norbert Haensel and I participated in the first Dean's Hot Seat of 1989. Some 20 students attended the Hot Seat and raised a number of questions relating to academic policy within the Faculty. Three issues appeared to be of particular concern, and I undertook to follow up on these and report back to the students via the *Quid*.

Le Nez...

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l'extrémité de celui-ci. La loi 178 semble dangereusement limitée dans son envergure. Autre attribut olfactif, le flair de Bourassa pour éviter les problèmes lui a carrément manqué. Peut-être était-il enrhumé?

Le gouvernement se perd en tergiversations: le contenu de la loi 178 se retrouvera dans les règlements. Le ministre de la Justice annonce même que la notion de prédominance du français sera développée au fil de la jurisprudence. Le Législateur improvise, et il abdique son pouvoir au profit de l'Exécutif et des tribunaux.

Les milieux francophones prétendent que la solution retenue est tellement imprécise et indéfinissable que le bilinguisme de fait est consacré. Ils ont raison. Les milieux anglophones, eux, considèrent que le Premier ministre cache leur langue, et qu'il en limite l'usage comme s'il s'agissait d'une substance dangereuse. Le discours du ministre Lincoln lors de sa démission, d'une éloquence rarement atteinte même par ses collègues francophones, fut à cet égard révélateur. Il préférerait la clarté de la loi 101 au savant dosage de la loi 178. Clifford Lincoln et les anglophones ont aussi raison.

A first question concerned the Faculty policy on appeals of passing grades. I am informed by Professor David Stevens, Chairman of the examination Committee, that this question, including a draft policy, will come before the Examination Committee for discussion within the next few weeks and will probably be brought to Faculty Council at its March Meeting for adoption commencing with the spring examination session. Currently, all failing grades are automatically re-read by the co-examiner prior to the approval of marks at the January or May Marks Meeting as the case may be. Students who are interested in making representations on this issue should speak to members of the Examination Committee this year who include Frank Denton and Julie Honigsberg.

A second issue concerned the language of instruction in the Faculty. Three particular issues were raised. First, it was suggested that there were a number of students in LL.B. who wished to take private civil law courses in French but were currently unable to do so. I was able to report that the Curriculum Committee is studying this question, and it may well be the case that one of the basic civil law courses taught in LL.B. II will be offered in the French language only. Depending on the results of a survey of the first-year class, this issue will be considered at the time the teaching schedule for next year is drawn up.

A second issue was what was perceived to be the lack of major or core courses in upper years offered in the French language. While the Faculty does offer some 25 courses in the French language, students indicated a desire to see the number of courses, such as Security on Property, Family Law, Labour Law, etc. offered in French, increased. I am pleased to announce that it is the Faculty's intention to offer French-language sections of Security on Immoveable Property and Family Law

next year to complement the teaching of Matrimonial Property Law and Lease Loan and Deposit and Judicial Law and Evidence which are offered only in French at the current time.

A third language-related question concerned the possibility of an obligatory second-language requirement to be imposed on all students enrolled in the Faculty. I confirmed with the Chairman of the curriculum committee, Professor Dennis Klinck, that this issue is indeed on the agenda of the curriculum Committee for this year and that the student surveys and proposals have already been circulated and will be discussed at the Committee's February meeting.

The third major question at the Hot Seat concerned the purpose of the streaming rules and the number of conflicts which resulted from the combination of streaming rules and exam conflicts. I indicated that the Associate Dean (Academic) and I would be looking at this issue during the period at which the course selection materials were prepared. We anticipated streamlining the streaming rules so that only large enrollment courses in second and third year might be affected by such streaming rules. Once again, I expect that this issue will be resolved in time for the early course selection materials this spring.

Both Norbert Haensel and I felt that the Hot Seat was a good idea. We propose to repeat the exercise early in the month of March in order that other general policy issues of concern to the entire student body can be brought forward and resolved in an appropriate fashion.

# Careers Day: Rethinking the Formula

by Dan Urbas, B.C.L. II

There were no firemen at Careers Day. Did you notice that? Nor were there any doctors, pilots, shortstops, or pirates. At least, none of them had a booth. I am sure their absence was simply an oversight or was due to a lack of space. I mean, it did say *Careers Day*. The day wasn't a total loss since I did use it as a research opportunity. Talking with the Toronto law firms, I compiled a legal memo for my LL.B. contracts writing assignment. Won't Prof. Stevens be surprised when I "1-2+3(3a-3b)+4" him with the word from Smith, Lyons and Stikeman, Elliott.

An estimated 150 lawyers attended Careers Day. They represented 73 firms, government agencies, and private in-house counsels, making the 1989 Careers Day McGill's largest to date. Thanks should be given to those who volunteered their effort and time to provide the Faculty with this unique opportunity. No one, however, seemed to know who or what was "Cause Canada"?

Student participation was weak though. Only 150 students took part in the CD. This low response was "puzzling" admits Prof. Jutras (Associate Dean Admissions and Placement). He feels that perhaps this low response can be explained. Third and fourth year students typically have already made career plans and choices; first years do not yet concern themselves with jobs three years away. That leaves only second year students. Associate Dean Jutras concedes then that the 150 student turn-out is "excellent, given the market." Still, he suggested that it may be time to "rethink the format of Careers Day". Smaller placement seminars last fall were well-attended by students. As well, smaller seminars are easier to concentrate on one area of interest: public agencies, non-profit organizations, human rights commission and other non-corporate employers. Associate Dean Jutras welcomes student ideas for

new formats and can be contacted through the Placement Office.

Careers Day is self-financing. Participants make nominal donations of \$50-\$100 to the CD committee. McGill students pay nothing. "Our" only cost is the time volunteered by Associate Dean Jutras, Suzanne Roy-Gasperec, Sharon Kuzminski, Jennifer Dolman and a handful of students who helped run CD itself.

The purpose of Career Day is two-fold. For the law firms and others, CD is an informal occasion to distribute information and acquaint themselves with McGill students. Participants are there to familiarize students with the various opportunities they offer. Students who missed CD are invited to visit the Placement Office where this information, mailing addresses and contact names are available, as well as the substantial body of regular resources provided by the office.

For the student, CD widens their appreciation of career choices, exposing them to a variety of legal alternatives. Students need not work for "Hewey, Dewey and Louie, Barristers and Solicitors since 1849".

Granted the large law firm dominated the day. Some students were disappointed not to find more agencies like Amnesty International, Human Rights Commission and non-

profit organizations. Two factors explain this absence: first, the ability of participants to afford Careers Day; some potential guests can't afford the cost in time and two day expense in Montréal, plus travel costs. Others cannot spare a representative to make the trip. Second, there is the question of the accessibility of the agencies themselves. These considerations help explain the overrepresentation of the large law firms at CD. Conscious of public relations, law firms have an interest in enhancing their contacts and their profiles. Contact names and addresses are readily available for law firms. To counter the imbalance of large law firm participation, students are asked to provide the CD committee with names and mailing addresses of non-corporate law firms and special interest groups that they would like to see at upcoming Careers Days.

The Committee is considering attempting to downscale the size of future Careers Days. Students at this year's CD were no doubt bewildered by the number of participants. Whether to discriminate on a first-come first-served basis or to allot a certain number of spaces to different interests, or have smaller career seminars - all possible choices. Again, students' input is welcomed on this issue and they are invited to discuss it with Associate Dean Jutras with their ideas. I don't forget the shortstops and the pirate

## HAPPY HOUSE COFFEE HOUR

Every Thursday in the Common Room from 3PM to 7PM

Chaque jeudi au Common Room de 15h à 19h

*Note the extended hour, more time for more fun!*